

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LISA EINESS,
Plaintiff,

v.

CIV. NO. _____

TRESCO, INC.,
Defendants.

DEFENDANT'S NOTICE OF REMOVAL

COME NOW, Defendant Tresco, Inc., through its attorneys, Conklin, Woodcock & Ziegler, P.C., and gives notice of removal of the above-entitled action. In support of this Notice, Defendant states:

1. This action was commenced by Plaintiff, through her counsel, on January 14, 2014 in the Third Judicial District Court, Case No. D-307-CV-2014-00088.

2. Plaintiff served the Defendants on January 22, 2014.

3. Plaintiff asserts a Family Medical Leave Act ("FMLA") claim.

4. The United States District Court for the District of New Mexico has original jurisdiction over the above-entitled action because Plaintiff's FMLA claims allegedly arises under federal law in accordance with 28 U.S.C. §1331, and the action may therefore be removed to this Court in accordance with 28 U.S.C. §1441.

5. In view of this Court's federal question jurisdiction of Plaintiff's FMLA claims, and considering that Plaintiff's other claims against Defendant is part of the same case or controversy under Article III of the United States Constitution, this Court has supplemental jurisdiction over all of Plaintiff's remaining claims under 28 U.S.C. §1367.

6. Venue is proper in this district because the cause of action is alleged to have occurred in New Mexico.

7. The Notice of Removal is timely under 28 U.S.C. §1446(b) based upon the circumstances described herein.

8. Copies of the Summons, Complaint and the records and proceedings from the Court are attached.

9. No further proceedings have been filed herein in State Court according to the docket sheet.

WHEREFORE, Defendant provides notice that the above action has been removed from the Third Judicial District Court of the State of New Mexico to the United States District Court for the District of New Mexico.

CONKLIN, WOODCOCK & ZIEGLER, P.C.

By: /s/ John K. Ziegler

John K. Ziegler
320 Gold Avenue SW, Suite 800
Albuquerque, NM 87102
Telephone: 505-224-9160
Attorneys for Defendant

I HEREBY CERTIFY that on this 14th day of February, 2014, I filed the foregoing electronically, which caused the below named counsel to be served by electronic means:

Dennis L. Richard
Law Office of Dennis L. Richard
4171 North Mesa, Suite B-201
El Paso, TX 79902

/s/ John K. Ziegler
John K. Ziegler

VC

3RD JUDICIAL DISTRICT COURT
DOÑA ANA COUNTY NM
FILED IN MY OFFICE
1/14/2014 1:28:00 PM
NORMAN E OSBORNE
DISTRICT COURT CLERK

STATE OF NEW MEXICO
IN THE THIRD JUDICIAL DISTRICT COURT
DOÑA ANA COUNTY

LISA EINESS,

NO. _____

Plaintiff

JUDGE: _____

vs.

D-307-CV-2014-00088

TRESCO, INC.,

Defendant

**COMPLAINT FOR DISCRIMINATION, RETALIATION AND VIOLATIONS
OF THE NEW MEXICO HUMAN RIGHTS ACT AND APPEAL FROM
ORDER OF NONDETERMINATION AND VIOLATIONS OF THE FAMILY
MEDICAL LEAVE ACT (FMLA), 29 U.S.C. SECTION 2615(A)(1)**

COMES NOW, LISA EINESS ("Einess"), Plaintiff, complaining of TRESCO, INC. (Tresco), Defendant, and files this Original Complaint for Discrimination, Retaliation and Violations of the New Mexico Human Rights Act and Appeal From Order of Nondetermination and Violations of the Family Medical Leave Act (FMLA), 29 U.S.C. Section 2615(A)(1) and for cause of action would show as follows:

**I.
PARTIES**

1.1 Plaintiff, Einess, is a resident of Las Cruces, New Mexico.

1.2 Defendant, Tresco, is a 501(c)3 non-profit organization funded through public and private sources including state and federal funds, grants and individual donations. This Defendant may be served with process by serving its President and Chief Executive Officer, Pam Lillibridge, through commercial courier service at Tresco, Inc., 1800 Copper Loop, Bldg. 1, Las Cruces, New Mexico 88005 as allowed by Rule 1-004 (E) (3) NMRA.

II.
JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction over this case.

2.2 Venue is proper in Doña Ana County, New Mexico because Plaintiff resides and was employed in Doña Ana County and the acts of discrimination, retaliation and other employment practices occurred in Doña Ana County.

III.
FACTUAL BACKGROUND

3.1 Einess was employed by Tresco as a Community Living Specialist for 12 years. Einess was a capable employee and a hard worker for Tresco.

3.2 On or about September 18, 2013, Einess was suspended by Steve Galuska and Joel Jaime for advocating for two disabled individuals. The two clients of Tresco were being moved from their home after having lived there for 14 years. Tresco promised them another home where they could continue to be together. However, since two other Tresco clients had died, Tresco decided they would be moved into that home. The fact that these clients had done so well together and had done so for 14 years did not matter to Tresco so they were placed in separate homes. Tresco failed to mention the separation to the clients. Einess went to her supervisors, Galuska and Jaime, and advocated for these two clients but Tresco CEO, Pam Lillibridge, stated that since it was her business to provide services for them, they would have to be placed wherever she wanted them to reside.

3.3 It was after having advocated for the Tresco clients that Einess was harassed and retaliated against by four male employees of Tresco, Supervisors

Scott Geyer, Gerald Lopez, Joel Jaime, and Steve Galuska. These supervisors would call Einess in for meetings while she was on FMLA and would fail to show up for the meetings. She was given training classes to complete in one day when those classes would have taken two working days. She was repeatedly called while on FMLA to come in and work or for the training classes.

3.4 Another form of discrimination and retaliation by Tresco against Einess was that while all employees of Tresco were asked to sign paperwork in the Human Resources Department regarding a \$.50 raise and a \$600.00 bonus for each, Einess was the only employee not notified or given the raise and bonus.

3.5 On October 9, 2013, after the constant harassment, retaliation, and disruption of her FMLA, Einess had no other choice but to resign. No reasonable person in Plaintiff's position would continue to subject themselves to the harassment and discrimination that Einess endured. Plaintiff was constructively discharged.

IV.

CAUSES OF ACTION AGAINST TRESCO, INC.

4.1 The actions of Tresco constitute discrimination against Einess in violation of the New Mexico Human Rights Act.

4.2 The actions of Tresco constitute intentional retaliation against Einess because she opposed the discrimination being perpetrated by Joel Jaime, Assistant Manager, Gerald Lopez, Scott Geyer, Department Manager, and Steve Galuska, CLS Supervisor, on behalf of Tresco.

4.3 The foregoing conduct by Tresco and its managers, Joel Jaime, Scott Geyer, Gerald Lopez, and Steve Galuska, acting in the course and scope of their

management authority for Tresco, amounts to retaliation against Plaintiff for opposing discrimination against disabled clients of Tresco and violations of FMLA. The conduct of Tresco violates the New Mexico Human Rights Act and as a consequence violates the public policy of the State of New Mexico.

V.
DAMAGES

5.1 As a result of Defendant's conduct, Plaintiff is entitled to recover damages for the lost wages, both in the past and in the future; lost benefits, both in the past and in the future; and emotional distress, both in the past and in the future; all consequences of Defendant's violations of the New Mexico Human Rights Act, retaliation against Plaintiff for opposing discrimination against disabled clients of Tresco and violations of FMLA.

5.2 As a result of the retaliation, discrimination and violations of FMLA, Plaintiff seeks punitive damages and liquidated damages to punish Defendant for its conduct.

VI.
EXHAUSTION OF ADMINISTRATIVE REMEDIES

6.1 Less than 300 days after the last discriminatory act hereinbefore alleged, Plaintiff filed a charge of discrimination with the United States Equal Employment opportunity Commission and also with the Human Rights Division of the New Mexico Department of Labor.

6.2 Thereafter, the Director of the Human Rights Division issued a document entitled "Order of Nondetermination", notifying Plaintiff of her right to appeal such order by filing a notice of appeal in the appropriate District Court.

6.3 This suit is filed on or before the 90th day after service of the Order of Nondetermination, in accordance with NMSA 1978 Section 28-1-13(A) (2005).


VII.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST

7.1 Plaintiff seeks pre-judgment and post-judgment interest as allowed by law. Plaintiff respectfully demands trial by a 12 person jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiff recover judgment of and from the Defendant for her actual damages, punitive damages and liquidated damages in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest, post-judgment interest attorney's fees, costs of suit, and such other and further relief to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

_____/s/ 

Dennis L. Richard

SBN: 4841

LAW OFFICE OF DENNIS L. RICHARD

4171 North Mesa, Suite B-201

El Paso, TX 79902

Telephone: (915) 533-2211

Telecopier: (915) 533-2244

Dated: January 14, 2014

VC

3RD JUDICIAL DISTRICT COURT
DOÑA ANA COUNTY NM
FILED IN MY OFFICE
1/14/2014 2:37:34 PM
NORMAN E OSBORNE
DISTRICT COURT CLERK

STATE OF NEW MEXICO
IN THE THIRD JUDICIAL DISTRICT COURT
DONA ANA COUNTY

LISA EINESS,

NO. D-307-CV-2014-00088

Plaintiff

vs.

TRESCO, INC.,

Defendant.

JURY DEMAND

Plaintiff, through her undersigned attorney, demands trial by a twelve person jury of all issues triable of right by jury and hereby tenders the sum of \$300.00 for jury fee.

Respectfully submitted,

/S/ Dennis L. Richard

Dennis L. Richard

SBN: 4841

LAW OFFICE OF DENNIS L. RICHARD

4171 North Mesa, Suite B-201

El Paso, TX 79902

Telephone: (915) 533-2211

Telecopier: (915) 533-2244

Dated: January 14, 2014.

3RD JUDICIAL DISTRICT COURT
DOÑA ANA COUNTY NM
FILED IN MY OFFICE
1/23/2014 8:12:20 AM
NORMAN E OSBORNE
DISTRICT COURT CLERK

STATE OF NEW MEXICO
IN THE THIRD JUDICIAL DISTRICT COURT
DONA ANA COUNTY

LISA EINESS,

NO. D-307-CV-2014-00088

Plaintiff

vs.

TRESCO, INC.,

Defendant.

CERTIFICATE OF SERVICE

COMES NOW Lisa Einess, Plaintiff, by and through her attorney, Dennis L. Richard, and hereby certifies that Plaintiff's Complaint for Discrimination, Retaliation and Violations of the New Mexico Human Rights Act and Appeal From Order of Nondetermination and Violations of the Family Medical Leave Act (FMLA), 29 U.S.C. Section 2615(A)(1) was served upon Defendant by Federal Express commercial courier service along with one copy of Summons and Jury Demand. Proof of service by Federal Express is attached to this pleading.

Respectfully submitted,

/s/Dennis L. Richard

Dennis L. Richard

SBN: 4841

LAW OFFICE OF DENNIS L. RICHARD

4171 North Mesa, Suite B-201

El Paso, TX 79902

Telephone: (915) 533-2211

Telecopier: (915) 533-2244

Dated: January 23, 2014.



January 22, 2014

Dear Customer:

The following is the proof-of-delivery for tracking number 877069881674.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	A.RAMIEZ	Delivery location:	1800 COPPER LOOP NM 88005
Service type:	FedEx First Overnight	Delivery date:	Jan 22, 2014 10:15
Special Handling:	Deliver Weekday		
	Direct Signature Required		

Shipping Information:

Tracking number:	877069881674	Ship date:	Jan 21, 2014
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Recipient:
PAM LILLIBRIDGE
TRESKO INC
1800 COPPER LOOP BLDG 1
NM 88005 US

Reference

Shipper:
DENNIS RICHARD
LAW OFFC OF DENNIS L RICHARD
4171 N MESA ST STE B201
EL PASO, TX 799021431 US
LISA EINESS

Thank you for choosing FedEx.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lisa Einess

DEFENDANTS

Tresco, Inc.

(b) County of Residence of First Listed Plaintiff Dona Ana
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dona Ana
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Dennis L. Richard, Law Office of Dennis L. Richard, 4171 North Mesa, Suite B-201, El Paso, TX 79902 (915) 533-2211

Attorneys (If Known)

John K. Ziegler, Conklin, Woodcock & Ziegler, P.C., 320 Gold Avenue SW, Suite 800, Albuquerque, NM 87102, (505) 224-9160

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 424 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1367, 1441, 1446

Brief description of cause:

Wrongful termination lawsuit - FMLA, NMHRA, retaliation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Manuel L. Arrieta

DOCKET NUMBER D-307-CV-201400088

DATE
02/14/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FFP _____ JUDGE _____ MAG. JUDGE _____